

**Amendment and Response and Examiner Interview Summary**

Applicant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238.101.101

Title: SYSTEM AND METHOD EMPLOYING YIELD MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed August 10, 2006. Claims 31-40 were rejected. With this Response, claims 31-35 have been amended. Claims 31-35 remain pending in the application and are presented for reconsideration and allowance.

**Double Patenting**

The Examiner provisionally rejected claims 31, 32, 33, 34, 35, and 36-40 under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Since the present application is the earlier filed application of these two pending applications, Applicant respectfully requests that if the below rejections are removed that the provisional double patenting rejection to claims 31-40 based claims 2, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378 be withdrawn per M.P.E.P. § 804 and claims 31-40 be allowed.

**Claim Rejections under 35 U.S.C. § 103**

The Examiner rejected claims 31-40 under 35 U.S.C. 103(a) as being unpatentable over the Campbell et al. U.S. Patent No. 5,918,209.

The Campbell et al. patent does not teach or suggest the limitations of amended independent claims 31-35 related to wherein the capacity of at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time **plus** a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time.

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The Examiner asserts that the overbooking factor referenced in the Campbell patent "makes additional capacity available." As the Campbell patent itself indicates, however, the overbooking factor accounts for "cancellations and no-shows" See column 7, lines 60-61. Cancellations and no shows are factors that impact demand for a composite resource, not capacity. An overbooking factor **does not and can not** make any additional capacity available. For example, a one hundred (100) seat plane permits no more than 100 passengers regardless of whether an overbooking factor is used or the size of the overbooking factor.

The Examiner also makes reference to examples in the Campbell patent which the Examiner asserts show that "values are communicated attempting to modify capacity available by decreasing the capacity." The Examiner cites column 2, lines 55-66, column 6, lines 40-55, column 7, lines 15-26 and 43-62, column 9, lines 25-35, column 12, lines 1-10 and column 19, lines 5-30. Applicant respectfully submits that not one of these citations show any attempt to modify available capacity.

The Campbell patent uses the word "capacity" a total of five times. The first three uses are in a single paragraph.

Perishable resources by definition are ones that cannot be inventoried and share three common characteristics: perishability, "fixed" capacity and segmentability. Perishability means that each resource ages or becomes unavailable, and thus has no value, after a certain date, time or similar temporal event. "Fixed" capacity implies a high cost of adding an incremental unit such that capacity is regarded as **static and unchanging**. Segmentability refers to the ability to segment customers based on a willingness to pay using different rates and/or different purchase restrictions, such as the date of purchase relative to the date of use. Examples of perishable resources include airline seats, hotel room nights, rental car days and similar products or services such as described in L. R. Weatherford & S. E. Bodily, A Taxonomy and Research Overview of Perishable-Asset Revenue Management: Yield Management, Overbooking, and Pricing, 40 Operations Research 5, pp. 831-44 (1992), the disclosure of which is incorporated herein by reference. See column 1, lines 29-46.

In this paragraph, the word "capacity" is used with the limiter "fixed" to describe one of the three characteristics of perishable resources. In this usage, the Campbell patent points out

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that a **"Fixed" capacity implies a high cost of adding an incremental unit such that capacity is regarded as static and unchanging.**"

The Campbell patent's other two uses of the word "capacity" are in an identical context. Both refer to the "the particular capacity of the airplane used." In other words, these remaining two uses show an example of the capacity use referenced by the definitional element of perishable resources referencing their "Fixed" capacity. One airplane may have a 100-seat capacity while another might have a 140-seat capacity. But airplane with the 100-seat capacity cannot, in a short time period, be made to have 101 seats or 99 seats, and therefore, its capacity is "fixed" or "static."

The Campbell patent uses the word "supply" numerous times. As one of ordinary skill in the art, the inventors of the Campbell patent were aware that the terms "supply" and "capacity" are not synonyms for the same concept, but uniquely different terms. The Campbell patent uses these terms as one of ordinary skill in the art would use these terms.

The Examiner, on the other hand, uses these terms as if they were synonyms possessing an identical meaning.

Here is a simple example of the difference between the term "capacity" and the term "supply":

A one hundred (100) seat plane with fifty (50) passenger reservations has a remaining available "supply" of fifty (50) passenger seats, but its "capacity" is still one hundred (100) seats.

Both the Campbell patent and the perishable resources towards which the Campbell patent is applied have **no ability to produce or make available additional quantities** as required by the limitations of amended independent claims 31-35 of:

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time **plus** a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time.

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No additional seat can be produced on a one hundred seat airplane. No additional room can be produced in a three hundred room hotel. No additional car can be created when all of the other rental cars are in use. As the Campbell patent itself distinguishes: **"Fixed' capacity implies a high cost of adding an incremental unit such that capacity is regarded as static and unchanging."**

The above limitations of amended independent claims 31-35 include the words "capacity" and "supply" in the same phrase, which accurately defines their relationship to one another and clearly demonstrates that the terms are not synonymous.

Amended independent claims 31-35 include the limitations that the communication occurs **prior to any first assignment** of other concurrently-consumed and/or concurrently-utilized composite resources **to the at least one potential user** which the Examiner admits that the Campbell et al. patent does not disclose and states that these limitations are well known. The Examiner cites the Walker et al. patent to disclose these limitations. These limitations, however, are not taught or suggested by the Walker et al. patent.

While the cited references to the Walker patent describe a communication which does occur prior to any first assignment, that communication is **not to the at least one potential user**, but rather to the system itself (Column 9, lines 30-50).

The Walker patent is a continuation-in-part application of patent application Serial No. 08/920116, entitled METHOD AND SYSTEM FOR PROCESSING SUPPLEMENTARY PRODUCT SALES AT A POINT OF SALE TERMINAL filed on August 26, 1997 and issued as U.S. Patent No. 6,119,099 on Sept. 12, 2000 (Column 1, lines 6-11). The intent and function of the application to make **supplementary** product offers is well disclosed in the application (Column 12, lines 44-61, Column 13, lines 20-33, lines 42-44, Column 14, lines 11-15). The words "supplementary," "change due," "round-up amount" and "upsale" indicate that the Walker patent is directed towards making a supplementary product sale **after a first assignment of product**, not before.

Amended Independent claims 31-35 all include limitations of "the **measure** of an ability to produce and/or make available additional quantities of the at least one composite resource

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over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is **derived from at least one human factor resource and is not a static ability.**" These limitations of the amended independent claims 31-35 are not taught or suggested by the Campbell et al. patent.

These limitations of amended independent claims 31-35 of the **measure of an ability to produce and/or make available additional quantities is derived from at least one human factor resource and is not a static ability**, provide a clearly defined functional distinction between a perishable resource and a human factor resource.

If a perishable resource described by the Campbell patent (e.g., airplanes, hotel stays, rental car days) had an ability to produce and/or make available additional quantities (which it definitionally does not), that ability would not be derived from a human-factor resource, but rather to some other perishable resource (e.g., an airplane, a hotel room and an automobile).

The Examiner also asserts that the claims contain no recitation of the term perishable. Amended independent claims 31-35, however, specifically recite that the capacity is **not static**, and one of the three definitional elements the Campbell patent requires when it uses the term "perishable," is the element of "fixed or static capacity."

In view of the above, each amended independent claim 31-35 includes limitations which are not taught or suggested by the Campbell et al. patent, alone or in combination with the other cited references. In addition, dependent claim 36 further defines patentably distinct amended independent claim 31; dependent claim 37 further defines patentably distinct amended independent claim 32; dependent claim 38 further defines patentably distinct amended independent claim 33; dependent claim 39 further defines patentably distinct amended independent claim 34; and dependent claim 40 further defines patentably distinct amended independent claim 35. Therefore, these dependent claims are also believed to be allowable.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103 rejection to claims 31-40, and requests allowance of these claims.

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CENTRAL FAX CENTER****OCT 04 2006****CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 31-40 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 31-40 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.